

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14078 of 2014

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J. H. Bio Innovations Pvt. Ltd. representative through its Manager Business Development, namely Hanumantha Rao; having its registered/corporate office at IInd Floor, Shivalaya Arcade, Sanjay Nagar Main Road, Bangalore, Karnataka 560094.

.... Petitioner

Versus

1. The State of Bihar.
2. The Chief Secretary, Govt. of Bihar, Old Secretariat, Patna at Patna.
3. The Principal Secretary, Animal and Fishery Department, Govt. of Bihar at New Secretariat, Patna at Patna.
4. The Secretary, Animal and Fishery Resources Department, Govt. of Bihar, New Secretariat, Patna at Patna.
5. The Project Director, Bihar Live Stock Development Agency, Bihar Veterinary College, Patna at Patna.
6. The Director, Animal Husbandry, Govt. of Bihar, New Secretariat, Patna at Patna.
7. The Director, Institute of Animal Health and Production Bihar Patna; Bihar Veterinary College, Patna at Patna.

.... Respondents

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Appearance :

For the Petitioner : Dr. Umashankar Prasad, Sr. Advocate,
M/s. Kuber Pathak,
Kamala Kant Tiwary, Advocates

For the State : Mr. Arvind Kumar No.2, S.C. 17

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT
Date: 03-04-2015

I have heard the parties.

This writ application has been filed *inter alia* for grant of following reliefs:

“1. For issuance of order or orders, writ or writs or direction or directions to setting aside the order dated 24.07.2014 communicated vide Memo No.1237 dated 24-07-2014 (Annexure - 6) by which the respondent authority has passed and communicated an absolutely illegal and arbitrary order of cancellation of Tender Notice No. PR 15417 (Animal) 2012-13 immediately after its full compliance as per the work order on the part of petitioner and demand of its money towards completion of

its work.

II. For issuance of writ for setting aside the order dated 16-07-2014 vide Memo No. letter no. 1586 dated 16-07-2014 (Annexure-6/A) which the respondent authority has passed illegal and arbitrary order of cancellation of Tender Notice No. PR 15417 (Animal) 2012-13 for establishment of Bacterial Vaccine Production Plant, immediately after full compliance of the contract on the part of petitioner i.e. after establishment of the said plant as per the tender and work order and only after demand of its money from the respondent authorities.

III. For direction the respondent authority to make payment at the tune of Rs.1,48,58,550/- (one corer forty eight lacs fifty eight thousand and five hundred and fifty only) the amount of work done, interest on delay payment.

IV. For restraining the Respondent no.3 from taking any further action against the petitioner on the basis of said letters which are under challenge before this Hon'ble court.

V. For directing the Respondent Authorities to make payment for the work which has been taken by the respondent authority as per the work order and after full compliance of the same.

VI. For granting any other relief or reliefs by way of passing any other order/orders as your lordship may deem fit and proper in the present case.”

The petitioner claims to had participated in the tender invited by the institute of Animal Health and Production, Bihar, Patna for supply and establishing of Bacterial Vaccine Production Plant in the institute of Animal Heath and Production, Bihar. Petitioner made an offer by filing its papers. It was declared successful in the technical bid and, thereafter, in the financial bid. Work order was given to it for supply, installation and commissioning of heavy machine and related accessories for establishment of Bacterial Vaccine production Plant. The work was completed and the petitioner submitted its bill. Thereafter, as would appear from the second supplementary counter affidavit filed on behalf of the respondent no.6



i.e., the Director, Animal Husbandry, Government of Bihar, at the time of finalizing the payment of the petitioner, found out certain discrepancies and irregularities in the tender process itself. The matter was scrutinized at the department level and, thereafter, on the basis of such irregularities the order contained in Annexure 6 and 6/A cancelling the concerned tender itself have been passed. In the answer to the query made by this Court, the respondents have clearly stated in the supplementary counter affidavit that no effort ever could be made for restraining the petitioner from supply or installation of instrument at any point of time till it had completed its work. The petitioner in his supplementary affidavit filed on 02.04.2015, after serving a copy upon the State on 23.03.2015 itself, has stated in paragraph no.3 that the orders impugned have been passed in complete violation of the principle of natural justice and without providing any opportunity of showing cause. Thereafter, no counter affidavit has been filed till date answering this allegation. However, at the time of hearing, learned counsel for the State submitted on instruction that it is the fact that the decision concerned was taken after scrutinizing the matter at the payment stage by the department after finding irregularities, however, no show cause notice was ever issued to the petitioner.

In that background of the matter, it is submitted on behalf



of the petitioner that the reputation of company, which is from outside the State and many reputed organizations including the Indian Institute of Science, National Centre for Biological Science, IVRI, IARI and others and also AIIMS, Delhi and Babha Atomic Research Centre (BARC) being its clients, is at stake apart from financial crisis which it would be facing due to the impugned action of the State authority. It is now being treated as condemned company. It is contended that the orders having been passed in gross violation of the well settled principle of *audi alteram partem*, has caused serious prejudice to the petitioner in the aforesaid manner.

Admittedly a notice inviting tender was floated. The petitioner participated in the tender process and it was declared successful in the technical bid and, thereafter, in financial bid and work order was given to it. It supplied not only the equipment or machinery but also installed it and the petitioner claims that production also started in the unit. Thereafter, it has been found during internal inquiry by the department that there were certain flaws in the tender process itself, therefore, tender has to be cancelled. Since the effect would be that the contract or agreement of the petitioner also goes along with the cancellation of the tender causing heavy loss upon it, in my opinion, that could not have been done without issuing a show cause notice to it.



In above view of the matter, though the allegations and counter allegations have been made and grounds of cancellation of tender has been disclosed in the counter affidavit and supplementary counter affidavit and the petitioner has filed rejoinder thereof refuting those allegations, without going into those questions, this Court finds force in the submission made on behalf of the petitioner that such order ought not to have been passed after completion of work by it and at the time of finalizing the final bill for payment without issuance of any show cause notice and considering the reply or grounds taken in reply thereof. It is well established principle of law that if any action of the authority is going to visit civil consequence upon a person or a party then in such case a show cause notice would be required to be issued and, if such person or party files reply thereof then a decision should only be taken after considering the grounds raised therein and recording reasons as to on what grounds such plea taken by the parties or a person is to be rejected.

As a result, the impugned orders, as contained in Annexure 6 and 6/A, are quashed and set aside so far it concerns the petitioner. However, the matter is remitted back to the respondent no.3, the Principal Secretary, Animal & Fishery Department, Govt. of Bihar, New Secretariat, Patna who shall examine the same, issue show cause notice to the petitioner, consider its reply and after

verifying relevant facts and also the role of the petitioner, if any, in getting the work order illegal and all the aspects involved in the matter, should take a decision and act accordingly by recording a reasoned and speaking order which should also be communicated to the petitioner. It is expected that the aforesaid exercise would be completed within a period of eight weeks from the date of receipt/production of a copy of this order.

Accordingly, this writ application stands allowed to the extent as indicated above.

(Dr. Ravi Ranjan, J)

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